

**TOWN OF HARPSWELL
HARBOR AND WATERFRONT ORDINANCE
ENACTED MARCH 9, 1991
AMENDED MARCH 14, 1992
AMENDED MARCH 12, 1994 EFFECTIVE JANUARY 1, 1995 ART. 18
AMENDED MARCH 11, 1995 ART. 26
AMENDED MARCH 16, 1996 ART. 30
AMENDED MARCH 6, 1999 ART. 19
AMENDED MARCH 8, 2003 ART. 78
AMENDED MARCH 11, 2006 ART. 20**

Section 1 PURPOSE

The Town of Harpswell Harbor and Waterfront Ordinance is hereby established to regulate marine activities within the Town, to ensure the safety of its property, its inhabitants and the general public, to guarantee the availability and use of a valuable public resource, and to create a fair and equitable framework for administration of these goals.

Section 2 AUTHORITY AND ADMINISTRATION

2.1 Authority

- 2.1.1 This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VII-A of the Maine constitution and 30-A M.R.S.A., Chapter 187, Subchapter IV, as the same may be amended from time to time.
- 2.1.2 This Ordinance is also adopted pursuant to Title M.S.R.A. Subchapter I, as the same may be amended from time to time. All provisions of Title 38 M.R.S.A. Subchapter I are adopted as part of this Ordinance, except to the extent its provisions are inconsistent with the expressed terms herein.
- 2.1.3 This Ordinance shall be known as the Town of Harpswell Harbor and Waterfront Ordinance, and shall govern specified activities within the limits of the Town of Harpswell.

2.2 Administration

This Ordinance shall be administered by the Selectmen of the Town of Harpswell who may be assisted by a Harbor and Waterfront Committee (“the Committee”)

2.3 Severability and Separability

Should any section or provision of this Ordinance for any reason be held void and invalid it shall not affect the validity of any other section or provision.

2.4 Designations of Gender, Singular and Plural

- 2.4.1 Wherever the masculine gender is used herein, it shall be construed to include the feminine.
- 2.4.2 Wherever the singular is used herein, it shall be construed to include the plural.

Section 3 CLASSIFICATION OF WATERS

3.1 Classification

All the waters of Harpswell shall be classified by affirmative vote at a Town Meeting as either Harbors, Anchorages, or Open Coastline.

3.2 Classifications Plan

3.2.1 The classification of areas shall be recorded on a map of the Town, hereinafter referred to as the Waters Classification Plan, prepared for that purpose and maintained by the Committee. Copies of the Plan may be made from time to time and may be distributed, but the official copy shall be that maintained by the Committee. A copy of the current Plan shall be filed at the Town office and made available for viewing by the Public upon request.

3.2.2 The Classifications of Harpswell waters shall be placed on the Waters Classification Plan and adopted at a Town Meeting.

3.3 Change in Classifications

3.3.1 Requests for changes in classifications shall be presented in writing to the Committee, and the Committee shall transmit the requested change to a Town Meeting with its recommendation either for approval or rejection by those voting at such Town Meeting.

3.3.2 All classification changes must be approved by affirmative action of a Town Meeting, either at the Annual Meeting or at a Special Meeting called for that purpose.

3.3.3 A record of all adopted modifications to the Waters Classification Plan indicating the date of the change(s), the reason for the recommended change(s), and the specifics of the change(s) shall be maintained by the Committee.

Section 4 DEFINITIONS – REGULATION AND ADMINISTRATIVE PROCESS

4.1 Abandoned Moorings

A mooring in waters classified as Harbor and/or Anchorage shall be considered abandoned unless it is used by the owner or his family during the 90 day period July 1 – October 1, unless the owners notified the town in writing of his intent to not use the mooring, registers mooring in accordance with Section 5, and grants permission for the use of the mooring to-be assigned to others. Any mooring which is unused for 365 days by-the owner or his family shall be considered abandoned when the Harbormaster decides it is abandoned.

4.2 Abandoned Vessel

Any vessel which is unattended and determined by the Harbormaster to constitute a danger to navigation, or which is sinking or already sunk, or which is stranded on any property without the permission of the owner of the property.

- 4.3 Commercial Vessel
Any vessel used principally to generate income.
- 4.4 Waters of Harpswell
All waters below the ordinary high tide mark and extending seaward three miles from the shoreline of property located within the boundaries of the Town of Harpswell
- 4.5 Anchorage
All areas within the waters of Harpswell specifically designated as Anchorage or Special Anchorage on the Waters Classification Plan. (For use as mooring areas but have no clear Zones or buffer zones specifically designated).
- 4.6 Harbor
All areas within the waters of Harpswell which have been classified as Harbors on the Waters Classification Plan and which have clear zones, buffer zones, mooring locations, etc. specifically established.
- 4.7 Open Coastline
All areas within waters of Harpswell not defined as Anchorage or Harbors pursuant to Paragraphs 4.5 and 4.6.
- 4.8 Harbormaster
The person appointed to serve as such by the Board of Selectmen.
- 4.9 Mooring
An anchoring device not carried aboard a vessel as regular equipment.
- 4.10 Rental Mooring
A mooring which is leased or rented to a person other than the holder of the mooring registration.
- 4.11 Non-Resident
Any individual who does not maintain a legal residence within the Town of Harpswell.
- 4.12 Non-Resident Taxpayer
A non-resident who pays real estate taxes to the Town of Harpswell.
- 4.13 Resident
An individual who maintains a legal residence in the Town of Harpswell.
- 4.14 Riparian Owner
An owner of a parcel of land contiguous to waters in Harpswell.
- 4.15 Town Float
A float owned and maintained by the Town of Harpswell

4.16 Town Landing

An area of land contiguous to waters of Harpswell which is owned by the town of which is impressed with a public right of access.

4.17 Vessel

A vessel shall include boats of all sizes powered by sail, machinery or by hand; scows; dredges, and craft of any kind.

Section 5 REGISTRATION OF MOORINGS

5.1 Registration

All moorings located below low water line in waters of Harpswell shall be registered with the Town Clerk before May 1 of each year. For Moorings registered after May 1, a penalty of double the normal mooring fee will be assessed. Any applicant who completes re-registration by May 1 of any year shall be given preference for the location occupied by the registrant's mooring the prior year, unless the Harbormaster determines that a demonstrated need for that site has been shown by someone higher on the list of priorities in section 5.5.3 below. In such an event, the Harbormaster will provide a new site agreeable to the original registrant and relocate the mooring, in the same condition as at its original site, at the expense of the mooring owner taking over the old site. Determinations by the Harbormaster may be appealed to the Selectmen. In 2006 the Selectmen, at their discretion, may waive this penalty.

5.2 Registration Fees

Unless the fee amount is otherwise determined by the Selectmen, the following fees shall apply:

Personal use by resident or
non-resident taxpayer: \$12.00/Year

Personal use by non-resident: \$60.00/Year

Rental use: \$50.00/Year

5.2.1 Registration Stickers

Upon registration, the Town Clerk will issue a registration sticker showing year and number which is to be attached to the mooring float, or if this is not practical, to the port bow of the boat. In this case, the registration number is to be painted or burned on to the mooring float ("R#").

5.3 Rental Moorings

No registration of any rental mooring shall be effected without proof that an Army Corps Permit has been issued in the name of the applicant for registration; and where such application is pending, registration by the Town shall be temporary pending final Army Corps approval.

5.4 Unregistered Moorings

If any moorings in the waters of Harpswell are unregistered after May 1, the Town Clerk shall notify the owner. If registration is not completed within thirty (30) days of the date of notice, the Harbormaster may have the mooring removed at the expense of the mooring owner and a fee of \$100.00 to be paid to the Town. In 2006 the Selectmen, at their discretion, may waive this penalty.

5.5 Assignment of Mooring Space

5.5.1 Registered moorings shall be assigned locations in Harbors and Anchorages by the Harbormaster on a first-come first served basis as space permits with due regard to navigation and the safety of persons and property, and, where feasible, the prior year location. New mooring permits will not be issued for a mooring that is located more than one-half mile from the applicant's point of land access.

5.5.2 If there is insufficient space to assign allocations for all registered moorings in location requested, the applications not assigned mooring locations shall be placed on a waiting list which will be maintained by the Town Clerk, posted and available for inspection in the Town Office.

5.5.3 As space in Harbors and Anchorages of the waters of Harpswell becomes available, assignments of mooring locations shall be made from the waiting list in accordance with the terms of 38 M.R.S.A. (7-A) (2) on the basis of the date of the applicant's request and with the following priorities:

5.5.3.1 Riparian Owner with respect to a location adjacent to shoreline;

5.5.3.2 Resident Commercial Fisherman;

5.5.3.3 Resident Taxpayer;

5.5.3.4 Commercial Uses;

5.5.3.5 Resident;

5.5.3.6 Non-Resident Taxpayer;

5.5.3.7 Non-Resident.

Sale of a mooring to a second party, when a waiting list exists, shall not convey the assigned location, unless sold to the person holding the next assignment on the mooring list. The Harbormaster shall be notified of all sales in Harbors and Anchorages.

5.5.4 When any mooring with the waters of Harpswell is located such that danger to other property is inherent due to its position, the Harbormaster shall be responsible for relocating the mooring or moorings involved whenever he is notified of the danger. Such relocating shall be handled in accordance with the priority list in Section 5.5.3, and the expense shared equally by the mooring owners involved.

5.6 Removal of Abandoned Moorings

The Selectmen shall notify the owner of an abandoned mooring of his duty to remove the mooring within thirty(30) days of the date of the notice. If the mooring is not removed or re-registered within the applicable thirty (30) day period, it may be removed by the Harbormaster at the expense of the owner in accordance with the provision of 38 M.R.S.A., S 4. Nothing in this Section shall impede enforcement (Section 8.1.7) or collection of penalties (Section 8.2).

5.7 Removal of Abandoned Vessels

Except where the vessel constitutes an immediate hazard to public health, safety and welfare, the Selectmen shall notify the owner of an abandoned vessel of his duty to remove any abandoned vessel within thirty (30) days of the date of the notice. If the vessel is not removed within the applicable thirty (30) day period, it may be removed by the Harbor Master at the expense of the owner in accordance with the procedures of 38 M.R.S.A. Sec 5. Where the Selectmen determine that the abandoned vessel constitutes a threat to public health, safety and welfare, they may authorize the Harbor Master to remove the vessel immediately and without notice at the expense of the owner. Nothing in this section shall prevent the Town from enforcing Section 8.1.5 or from collecting penalties (Section 8.2).

Section 6 HARBOR AND WATERFRONT COMMITTEE

6.1 Committee Make-up

The Harbor and Waterfront Committee shall be comprised of seven members, appointed by the Board of Selectmen.

6.2 Terms of Office and Positions

6.2.1 At the time of adoption of this Ordinance, the Board of Selectmen shall designate two members of the Committee to have terms of office expiring at the end of that calendar year, two members to have terms of office expiring the end of the second calendar year, and three members to have terms of office expiring at the end of the third calendar year.

6.2.2 Thereafter, as normal terms of office expire, appointments to the Committee shall be for three year terms, thus guaranteeing continuity of the Committee and its work.

6.2.3 The committee shall annually, at the first meeting of the calendar year, elect a Chairman, a vice-chairman, and a secretary from among its own members, Those so elected shall take office at the close of the meeting and shall continue in office until the next annual election. Should the chairman's position become vacant, the vice-chairman shall succeed to that position, Should other duly elected positions become vacant, the chairman will fill them by appointment.

6.2.4 Should any Committee Member's position become vacated, a replacement shall be appointed by the Board of Selectmen to serve out the remainder of the term of the member being replaced.

6.2.5 Upon the written recommendation of the Committee, the Board of Selectmen may request the resignation of an inactive or disruptive Committee member and take the necessary steps for replacement.

- 6.2.6 Should a vacancy occur within three months of a normal term expiration the Selectmen, at their discretion, may either leave the position vacant for the remainder of the unexpired term, or appoint a new member whose term will run for three years plus the unexpired remainder.

6.3 Duties and Responsibilities

- 6.3.1 The Committee shall act as an advisory Board to the Board of Selectmen on all matters pertaining to Harbors, Anchorages and the Waterfront.
- 6.3.2 The Committee shall monitor the activities of the Harbormaster and his care, custody and management of Town Landings, harbors, Anchorages and their facilities and, from time to time, make recommendations to the Board of Selectmen.
- 6.3.3 The committee shall work closely with the Harbormaster to ensure that his duties are carried out as intended by this Ordinance, Title 38 M.R.S.A. Subchapter I and other applicable statutes. Suggestions for improvements or other change (s) in committee responsibilities shall be discussed with and approved by vote of the Board of Selectmen before being adopted.
- 6.3.4 When so requested by the Board of Selectmen, the committee shall serve as a Board of Appeals on matters pertaining to Harbors, Anchorages and Waterfront, in which case the Committee's finding shall be binding. Services from the Town Attorney will be available to the Committee in these matters.
- 6.3.5 Decisions of the committee, when acting as a Board of Appeals, may be appealed to Superior Court. However, notice of the intent to do so must be filed with the Board of Selectmen within thirty (30) days of the Committee's decision.
- 6.3.6 The Secretary shall keep an accurate record of all of the Committee's proceedings and shall provide the Board of Selectmen with copies of the minutes of all meetings, and also with an Annual Report prepared in time for inclusion in the Annual Town Report.

6.4 Compensation

- 6.4.1 Committee Members shall serve without compensation.
- 6.4.2 Committee Members shall be reimbursed for any expenses incurred with the prior approval of the Board of Selectmen.

Section 7 THE HARBORMASTER, DEPUTY HARBORMASTER(S) AND ASSITANT HARBORMASTERS – QUALIFICATIONS AND SALARY

7.1 Harbormaster Appointment

The harbormaster shall be appointed by the Board of Selectmen and shall be subject to their control and supervision. The Harbormaster shall serve in that capacity until discharged by the Board of Selectmen or until resignation.

7.1.1 Deputy Harbormaster(s)

Deputy Harbormasters will serve only in certain designated areas of the Town's waters, and will report directly to the Harbormaster who will define and limit his responsibilities. Where the term "Harbormaster" is used throughout the remainder of this Section 7, it shall also include "Deputy Harbormaster" except as may be limited or restricted by the Harbormaster himself, and also excluding paragraph 7.7 – Meetings. Deputy Harbormasters are not required to attend meetings of the Harbor and Waterfront Committee since their activities are regularly reported to the Harbormaster.

7.1.2 Assistant Harbormaster(s)

Assistant Harbormasters shall serve without salary and are to serve only in certain designated areas of the Town's waters. Their function is only to assist the Harbormaster, and to keep him informed of any problems or any controversy in their area. The Harbormaster shall be appointed by the Board of Selectmen and shall serve in that capacity until discharged by the Board of Selectmen or until resignation.

7.2 Training

Within eighteen months of his/her employment, the Harbormaster shall successfully complete the State Harbormaster Association's Training course at the expense of the Town. Failure to pass the course for any reason shall result in his/her termination and discharge by the Board of Selectmen, after notice and hearing.

7.3 Appeal to Committee

Any person aggrieved by a decision of the harbormaster may appeal the decision to the Committee for review. The Committee shall make a recommendation to the Board of Selectmen who will make a decision. When requested to do so by the Board of Selectmen, the Committee shall decide the appeal.

7.4 Carrying a Weapon

Even though the Harbormaster may hold a valid permit to carry a weapon, he/she shall not do so in carrying out his/her duties until he/she has completed the Criminal Justice Academy training course (providing for power of arrest as well as permit for carrying a weapon) and unless he or she shall have received written approval from the Board of Selectmen to make arrests and to carry a weapon.

7.5 The salary of the Harbormaster and Deputy Harbormaster(s) shall be determined by the Board of Selectmen.

7.6 Management

The Harbormaster shall manage the Floats, Docks, Ramps, Moorings and Landings that are owned by the Town and shall make recommendations regarding their operation, use and maintenance to the Committee.

7.7 Meetings

The Harbormaster shall regularly attend meetings of the Harbor and Waterfront Committee, but shall not be a member of the Committee. He shall keep the Committee fully informed of all his activities, problems encountered, solutions affected, and activities which have required his special attention. He shall also provide information on matters pertaining to the committee's duties and responsibilities.

7.8 Records

The Harbormaster shall maintain a permanent bound record in which he shall record all complaints received (both written and oral), the date and time received, the response made to the complaint, and the date and time of such response. This record shall be maintained in ink.

7.9 Enforcement

The Harbormaster shall have the authority and responsibility to enforce the Rules and Regulations contained in this Ordinance and the provisions of 38 M.R.S.A. Subchapter I

Section 8 RULES AND REGULATIONS

8.1 Operation of Vessels

- 8.1.1 It shall be unlawful to operate a vessel in the waters of Harpswell so as to endanger persons or property.
- 8.1.2 It shall be unlawful to operate a vessel in a manner which creates excessive wake or wake-wash.
- 8.1.3 It shall be unlawful to establish or maintain an unregistered mooring.
- 8.1.4 It shall be unlawful to park a motor vehicle so as to block or restrict access to block or restrict access to a Town Landing.
- 8.1.5 It shall be unlawful to abandon a vessel within the waters or upon the shoreline of Harpswell.
- 8.1.6 It shall be unlawful to abandon lobster, crab and shellfish cars or crates within The waters of Harpswell.
- 8.1.7 It shall be unlawful to abandon a mooring within the waters of Harpswell.
- 8.1.8 It shall be unlawful to leave a vessel at a Town Wharf, Dock or Float for a period exceeding thirty (30) minutes without the permission of the Harbormaster.
- 8.1.9 It shall be unlawful to rent moorings or slips, in facilities not existing at the time this Ordinance is adopted, without providing for one parking space for each mooring or slop rented. Parking spaces shall be provided for expansions of existing facilities. Parking spaces and aisle dimensions shall be as specified in the Town's Site Plan Review Ordinance regarding parking layout and design.

8.1.10 It shall be unlawful to refuse to obey any lawful Order of the Harbormaster.

8.1.11 It shall be unlawful for any person or persons to establish or maintain a year round residence on any type of vessel within waters of Harpswell unless the vessel has established access to property with shoreline on the eaters of Harpswell which is equipped with waste pump-out facilities and the vessel contains sewage holding tankage attached to each marine toilet and the vessel's sewage system is not equipped with "Y" valves to permit overboard discharge.

8.2 Violation of Ordinance

The violation of any rule or regulation established by this Ordinance shall be a civil violation punishable by a fine not to exceed \$250, unless the amount is otherwise decided by the Selectmen. For purposes of this Section, each day that a violation continues shall be considered a separate offense.

8.3 Enforcement of Ordinance

All law enforcement officers of the State of Maine, including Harbormasters and their deputies, shall have the authority to enforce this Ordinance and, in the exercise thereof, shall have the authority to stop and board any vessel found in violation of this Ordinance. It shall be unlawful for any operator of such vessel to fail to stop upon request of such officer and violation shall be punishable as provided in Title 30 M.R.S.A. S 4452.